UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,292	02/27/2004	James Albert Brenton	024777.0139PTUS	7617

	7590	03/30/2007		EXAMINER

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ART UNIT	PAPER NUMBER
2109	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Office Action Summary	10/789,292	BRENTON ET AL.
	Examiner	Art Unit	
	Cordelia Kane	2109	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _27 February 2004_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-24_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-24_ is/are rejected.

7)☒ Claim(s) _6_ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _27 February 2004_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This action is responsive to the non-provisional application filed on 2/27/2004.

Claims 1 – 24 are pending. Claims 1, 6, 11 and 23 are independent.

Specification

2.   The disclosure is objected to because of the following informalities: On page 17,

first paragraph, of the specification the applicant refers to switch 324 twice. In figure 3,

the switch is 322 and the modem is 324. It is unclear which the applicant intended to

refer to.

Appropriate correction is required.

Claim Objections

3.   Claim 6 is objected to because of the following informalities: the claim ends with

"said remote modem; and ". It is assumed this is where the applicant intended for the

claim to end. Please remove the "and" and end the sentence with a period. Appropriate

correction is required.

Claim Rejections - 35 USC § 101

4.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11 – 22 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter. The claims fail to place the invention squarely

within one statutory class of invention. On page 10, second paragraph of the instant

specification, applicant has provided evidence that applicant intends the "medium" to

include signals. As such, the claim is drawn to a form of energy. Energy is not one of

the four categories of invention and therefore these claims are not statutory. Energy is

not a series of steps or acts and thus is not a process. Energy is not a physical article

or object and as such is not a machine or manufacture. Energy is not a combination of

substances and therefor not a composition of matter.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6.   Claims 1 – 5, and 11 – 22 are rejected under 35 U.S.C. 102(b) as being

anticipated by Jingshu He's US Patent 5,944,824. Referring to claim 1, He teaches "A

system for accessing remote devices on a communications network using out-of-band

access, comprising":

    a.   A first server (security server) operable to:

        i.   Receive a request to access a modem (network element) (column

4, lines 9-11),

        ii.   Authenticate a user (column 4, lines 25-26),

iii.   Facilitate a session with a second server (secure terminal server)

that connects to a network component (column 14, lines 60-65),

iv.   Establish a secure pathway over a communications network

(column 5, lines 30-32),

v.   Transmit data for monitoring system functions (column 5, line 50)

b.   A plurality of modems coupled to both servers (column 4, line 42) and

operable to authenticate a request (column 15, lines 19-21) and to communicate

operational status (column 5, line 53).

7.   Referring to claim 2, He teaches the second server operable to select a specific

modem (column 15, lines 1-2).

8.   Referring to claim 3, He teaches that the first server is able to log invalid login

attempts (column 5, lines 49-50).

9.   Referring to claim 4, He teaches that the first server is capable of allowing

specific access to privileged users (column 8, lines 51-52).

10.   Referring to claim 5, He teaches that the second server acts as a centralized

modem bank (column 4, lines 43-45).

11.   Referring to claim 11, He teaches

c.   Receiving a first request via an out-of-band process to establish a

connection with a network element (column 4, lines 57-60).

d.   Receiving a security identifier to authenticate the request (column 5, lines

8-9)

e.   Identifying a dial up number for accessing the remote modem is inherent

from the servers ability to connect with the remote modem. If the server did not

have the number to connect then it would not be able to connect.

f.   Capturing information about the first request to a log file (column 5, lines

49-51).

g.   Directing a server to identify which of the plurality of modems to connect

with to access the requested network element (column 14, lines 60-61).

h.   Authenticating a second request to access the remote modem (column 14,

lines 64-67).

i.   Authenticating a third request to access the network element (column 15,

lines 1-2).

12.   Referring to claim 12, He teaches establishing a communications pathway after

exchanging packets (tickets) of information (column 14, lines 59-67).

13.   Referring to claim 13, He teaches issuing a command to the network element to

authenticate the access (column 15, lines 7-21).

14.   Referring to claim 14, He teaches that the identifier is a security credential

component (column 5, lines 8-9).

15.   Referring to claim 15, He teaches

j.   Issuing a request from the user (column 14, line 59).

k.   Receiving a telephone number for dialing is not specifically mentioned in

the specification. But it is inherent that the number for dialing would be needed to

connect to the specified element. He teaches connecting with the specified

element (column 15, line 4-5).

l.   Validating the telephone number against a predetermined list is not

specifically taught. But it is taught that the element that user is attempting to

access is checked against a predetermined list (column 5, lines 16-17). Since the

element is a modem it would be inherent that this list would be phone numbers.

16.   Referring to claim 16, He teaches capturing session information (column 5, lines

49 – 51).

17.   Referring to claim 17, He teaches logging logon successes and failures (column

5, line 50).

18.   Referring to claim 18, He teaches logging information as to the user identifier and

time of attempt (column 5, lines 52-53).

19.   Referring to claim 19, He teaches

m.   Sending a request to establish a connection with a remote modem

(column 14, line 59).

n.   Selecting a modem from the modem pool, and receiving a response from

said server to establish a link with said pooled modem. This is taught in the ticket

that is returned to the secure server. It is not only the response but it includes the

server that is selected to connect to (column 14, lines 59-63).

o.   Dialing a telephone number to said pooled modem to establish a link. It is

inherent that this number is dialed because the server is able to establish a

connection with the remote modem (column 15, lines 4-5).

20.   Referring to claim 20, He teaches that authenticating the request includes:

    p.   Receiving login identification information (column 14, 60-64).

    q.   Verifying the login information against a list of authorized users (column 5,

lines 9-10).

    r.   Notifying the user with a status response (column 9, lines 32-33).

21.   Referring to claim 21, He teaches that the user information is a username and

password (column 14, lines 61-62).

22.   Referring to claim 22, He teaches that the status response is an approval to

access said remote modem (column 9, lines 32-33).

23.   Claims 6, 7 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by

Tadhg Kelly et al's US patent 6,678,826. Referring to claim 6, Kelly teaches dialing into

a remote modem to request access to a network element and authenticating that

request (column 8, lines 45-49).

24.   Referring to claim 7, Kelly teaches requesting access via a modem (column 8,

line 45).

25.   Referring to claim 10, Kelly teaches encrypting communicated data to secure

network connections (column 8, line 67 – column 9, lines 1-3).

Claim Rejections - 35 USC § 103

26.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

27.   The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

28.   Claims 8, 9, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over, Kelly as applied to claim 6, 7, and 10 above and further in view of He as applied to claims 1 – 5 and 11 – 22 above. Referring to claim 8, Kelly teaches the limitations of parent claim 7. It fails to teach the limitation of validating the number dialed to establish that the requesting modem is authorized to connect. In the specification it is explained this is so only the modem banks will be able to access the network elements. While validating the number is not expressly established in the prior art, He does teach that only the secure terminal server acts as a bridge between the network and the remote elements. It would have been obvious to modify Kelly so that the actions that are performed individually at each node be centralized into individual servers, as taught by He.

29.   Referring to claim 9, Kelly and He teach the limitations of parent claim 8. Kelly goes on to teach using credentials for authentication (column 8, 29-34).

30.   Referring to claim 23, both Kelly (column 1, lines 8-10) and He (column 1, lines 7-10) teach a system for performing the method of claims 5 – 8 and likewise teach the system of claims 23.

31.   Referring to claim 24, He teaches a system (column 1, lines 7-10) that only allows access to users that are able to log on following the device prompts (column 15, lines 19-20).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cordelia Kane whose telephone number is 571-272-7771. The examiner can normally be reached on Monday - Thursday 8:00 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on 571-272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JOSEPH DEL SOLE
SUPERVISORY PATENT EXAMINER

3/26/07